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September 10, 2021

VIA ELECTRONIC FILING

The Honorable Jocelyn Boyd
Chief Clerk / Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

Re: Cherokee County Cogeneration Partners, LLC v. Duke Energy Carolinas, LLC
and Duke Energy Progress, LLC
Docket No. 2020-263-E

Dear Ms. Boyd:

I am writing on behalf of Duke Energy Carolinas, LLC ("DEC") to update the Commission on the status of the extensions of the 2012 contract between DEC and Cherokee County Cogeneration Partners, LLC ("Cherokee"). The extensions I refer to were ordered by the Commission in Order No. 2020-846 and Order No. 2021-294, both issued in the referenced docket. In Order No. 2021-294 the Commission recognized that the extensions were likely to result in an overpayment to Cherokee during 2021 and held that "Cherokee should bear the economic risk of any possible overpayment from any extension of the 2012 PPA."

In an effort to ensure that the risk of overpayment was properly allocated to Cherokee, DEC wrote Cherokee on July 6, 2021 (copy attached) to make a proposal by which Cherokee would increase the amount of performance security under the contract. The DEC proposal requested increases in the amount of an existing letter of credit to \$3 million (an increase of \$2 million) on or before August 10, 2021 and an additional \$3 million on or before September 10, 2021. While Cherokee did meet the additional \$2 million security requirement by August 10th, Cherokee responded to the DEC July 6th proposal for the first time in writing yesterday, September 9, 2021. In its response, which was filed with the Commission, Cherokee refused to increase the amount of the security by \$3 million on September 10th.

In its July 6th proposal DEC informed Cherokee that if Cherokee failed to increase the amount of the letter of credit as proposed by DEC, that DEC would exercise its rights under Section 12.2 of the 2012 PPA to withhold payments to Cherokee in order to ensure the appropriate level of security was available to make DEC and customers whole in the event of a future default by Cherokee. Yesterday, by email from counsel for DEC to counsel for Cherokee, DEC reiterated its intent to withhold



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payments to Cherokee under the contract absent timely action by Cherokee to provide the additional security. The next payment from DEC to Cherokee is due September 16, 2021. If Cherokee has not increased the amount of the letter of credit by that date, DEC plans to withhold funds to provide the additional security.

We understand that the Commission may have expected that its rulings in Order No. 2021-604 would lead to a resolution of the disputes between DEC and Cherokee. However, as shown by the fact that both DEC and Cherokee asked the Commission to reconsider its rulings in that order, there remain substantial differences between the parties that prevent the successful negotiation of a replacement PPA. What is not in dispute is that Cherokee has been and is being overpaid in 2021. DEC believes that Cherokee, having requested the extensions that have given rise to the overpayments, should provide the additional security to ensure that neither DEC nor its customers bear the risk of that overpayment. Our position on this point is directly supported by the Commission's ruling in Order No. 2021-294.

This letter is not a request for any relief or action from the Commission. It is provided as an update on the status of the contract, the overpayment and DEC's efforts to obtain appropriate security, given the Commission's previous involvement in these matters.

Yours truly,

Frank R. Ellerbe, III

FRE:tch

Attachment

c w/attachment via email: C. Jo Anne Wessinger-Hill, General Counsel
Parties of Record
Heather Shirley Smith, Deputy General Counsel
E. Brett Breitschwerdt, Esquire
Tracy S. DeMarco, Esquire



July 6, 2021

Via Email and Priority Mail

Ms.Carolyn Murff
Senior Vice President
Cherokee County Cogeneration Partners, LLC
1700 Broadway, 35th Floor
New York, NY 10019

Re: Increase in performance security under Power Sales Agreement between Cherokee County Cogeneration Partners, LLC and Duke Energy Carolinas, LLC, dated as of June 28, 2012 and extended by order of the Public Service Commission of South Carolina (the "Commission") on December 30, 2020 and on April 28, 2021 (as extended, the "PPA")

Dear Ms. Murff:

Duke Energy Carolinas, LLC, ("DEC") has reviewed Mr. Hanson's email dated June 25, 2021 in follow up to our discussions regarding DEC's request for an increase to the performance security posted by Cherokee County Cogeneration Partners, LLC ("Cherokee") under the above referenced PPA as communicated to Cherokee in the Notice of Deficiency dated May 24, 2021 and the Notice of Default dated June 15, 2021. In an effort to compromise our differences regarding the amount of performance security that is appropriate to secure Cherokee's obligations under the PPA through the extension period ending on August 28, 2021, DEC is willing to agree to your offer to increase the letter of credit amount specified in your email with the following adjustments:

- On or before August 10, 2021, and before DEC makes payment on the July invoice, Cherokee will increase the letter of credit to a total of \$3,000,000 (an increase of \$2,000,000).
- On or before September 10, 2021, and before DEC makes payment on the August invoice, Cherokee will further increase the letter of credit to a total of \$6,000,000 (an additional increase of \$3,000,000).

These amounts correspond to the deficiencies illustrated in the table provided by Cherokee in your email with the additional security, calculated consistent with the values in your table, required to cover the term beyond the July payment. If Cherokee increases the performance security as specified above, DEC will consider the Default specified in the above referenced Notice of Default to be cured. If Cherokee fails to cure the Default within the period specified above, DEC will withhold the above stated additional security amounts from future payments to Cherokee, commencing with the July 2021 invoice, in accordance with Section 12.2. The retained amounts together with the letter of credit will be held by DEC as security for Cherokee's obligations under the PPA. The retained amounts, less any amount offset to cover Cherokee's obligations under the PPA, shall be returned to Cherokee promptly after Cherokee's satisfaction of its obligations under the PPA, including without limitation, the refund obligations under Section 8.4 if applicable.

The performance security amounts agreed to by DEC in this letter are for the sole purpose of compromising and settling the dispute regarding the amount of performance security that is appropriate to secure Cherokee's obligations under the PPA through the extension period ending on August 28, 2021 and does

not constitute an admission by DEC that the amounts specified in the above referenced Cherokee table are accurate or appropriate. DEC reserves all its rights, remedies and defenses under the PPA or under applicable law and does not waive any right, remedy or defense whether or not specified herein, including the right to request additional security if the PPA is extended beyond August 28, 2021.

If you have any questions regarding this Notice feel free to feel free to contact me at your earliest convenience.

Sincerely,

David B. Johnson

David B. Johnson

Director, Business Development & Compliance

cc (via email):

Michael Keen, Duke Energy

Robert Dewechter, LS Power

Nathan Hanson, LS Power